IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SIXTEENTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

-

WRIT PETITION NO : 20969 of 1994

Between:

1 Shaik Ramajan Be, W/o.Late Shaik Moulana Saheb.

2 Shaik Khaja Vali, S/o.Late Shaik Moulana Saheb.

3 Shaik Hussain Shah, S/o.Late Shaik Moulana Saheb.

4 Shaik Khaja Hussain, S/o.Late Shaik Moulana Saheb.

5 Shaik Kashim Peer, S/o.Late Shaik Moulana Saheb.

All are residents of Kongamadugula Village Addateegala Mandal
East Godavari Dist.

..... PETITIONERS

AND

1 Agent to Government and District Collector,
East Godavari Dist., Kakinada

2 The Deputy Collector (Tribal Walfare) ,
Rampachodavaram, East Godavari Dist

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue any appropriate writ, order or direction particularly one in the nature of Writ of Mandamus calling for the records leading to the order of the first respondent in C.M.A.No.2/81, dated 31-3-1989 and declare the same as illegal, and void.

Counsel for the Petitioners: MR.A.RAMALINGESWAR RAO

Counsel for the Respondents 1 and 2 : G.P. for Revenue

The Court made the following :

O R D E R :

1. Heard Sri A.Ramalingeswara Rao, learned counsel appearing for the petitioners and the learned Government Pleader for respondents.

2. The petitioners herein, claiming to be patta holders granted under the provisions of the A.P. Muttas (Abolition & Conversion into Ryotwari) Regulation, 1969 (hereinafter referred to as 'the Regulation'), filed this Writ Petition, *inter alia,* challenging the order dated 31.03.1989 passed by the first respondent in C.M.A.No.2 of 1981, dismissing the appeal, confirming the orders of the primary authority namely the second respondent herein, initiating provisions of the Land Transfer Regulations and holding that the petitioners are not entitled to continue in possession.

3. The case of the petitioners, in brief, is that under the provisions of Regulation, one late Shaik Moulana Saheb, husband of first petitioner and father of petitioners 2 to 5, was granted patta and they have been in possession of the same all along, and so, question of initiation of proceedings under the Land Transfer Regulations, does not arise, nor the rights conferred under the aforesaid patta are affected in any way. But, the second respondent suo-motu initiated proceedings in L.T.R.P.No.270 of 1979, seeking eviction of the petitioners, which was affirmed by the first respondent in the impugned proceedings, without acceding to the plea of the petitioners.

Hence, the Writ Petition.

4. Learned counsel appearing for the petitioners submits that having regard to the fact that patta has been granted validly and as long as it

stands, question of initiating such proceedings does not arise, especially when there is no other claimant in regard to the land.

5. The learned Government Pleader sought to sustain the orders of the authorities on the ground that in view of the Land Transfer Regulations, the petitioners are not entitled to continue in possession and therefore, the authorities had rightly rejected the claim and ordered eviction.

6. Considering the submissions made and on perusal of material, it is seen that there is no serious dispute with regard to the fact that one Shaik Moulana Saheb was granted patta under the Regulation and the said patta was in fact passed upon recognising his prior possession, and that the petitioners continue to remain in possession and enjoyment all along. It is submitted that the second respondent invoked provisions of the Land Transfer Regulations on the ground that the said patta is not valid and the petitioners are not entitled for the same being non-tribals. This Court has been consistently taking the view that as long as patta exists and is not cancelled, the authorities can not invoke provisions of the Land Transfer Regulations nor seek any such eviction. It is not the case of the respondents that the petitioners are in possession under any illegal transaction, contrary to the provisions of the Land Transfer Regulations. Having regard to the same, it is to be held that as long as the petitioners hold the patta, they can not be dispossessed by merely invoking provisions of the Land Transfer Regulations.

7. In the circumstances, the Writ Petition is allowed setting aside the impugned order of the first respondent dated 31.03.1989 passed in C.M.A.No. 2 of 1981. No costs.

16.09.2004

DRK

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice,

On this the Thursday the Sixteenth day of September, Two Thousand and Four.

Assistant Registrar

Copy to:

1 Agent to Government and District Collector,
East Godavari Dist., Kakinada
2 The Deputy Collector (Tribal Walfare) ,
Rampachodavaram, East Godavari Dist

3. Two CCs to the G.P. for Revenue, High Court buildings, High Court of A.P., Hyderabad (o.u.t.).

4. Two CD copies.